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Commissioning Reform

On January 28, 2004, David Kay reported to Congress on his findings as head of the Iraq Survey Group, which President George W. Bush had formed to scour Iraq for weapons of mass destruction (WMD) after the 2003 U.S. invasion of that country. Kay testified that he had found no evidence of Iraqi WMD and that WMD stockpiles probably did not exist in Iraq at the time of the invasion.[1] His report was immediately seized on by prominent Democrats, who argued that it showed Bush took the country to war under false pretenses, and called for an independent investigation of the administration's use of intelligence (Schlesinger and Milligan 2004).

Within days of Kay's testimony, Bush created a presidential commission, chaired by former Senator Charles Robb (D-VA) and U.S. Court of Appeals Judge Laurence Silberman, to probe the intelligence community's capabilities and deficiencies related to foreign WMD programs.[2] Bush's action was principally motivated by a desire to defuse the political pressure generated by the failure to find WMD in Iraq. As the *Washington Post* reported, Bush sought "to get out in front of a potentially dangerous issue that threaten[ed] to cloud his reelection bid" (Milbank and Priest 2004). In response, Democratic leaders charged that the commission's mandate was inadequate because it did not cover how intelligence had been handled by the Bush White House (Allen 2004).

[1] Testimony by David Kay before the Senate Armed Services Committee, January 28, 2004.
[2] Executive Order 13328, issued February 6, 2004.

Given the Bush administration's deeply political motivation for establishing the Robb-Silberman Commission, expectations for its impact on intelligence policy were quite low. The commission's report, issued in March 2005, identified numerous intelligence shortcomings and offered seventy-four proposals for reform. But the reactions of many commentators remained focused on the limits to the commission's inquiry, implying that its only function was to deflect blame for the WMD fiasco away from the White House by making the intelligence community a scapegoat for it (Pincus and Baker 2005). A *New York Times* editorial asserted caustically that the commission "could have saved the country a lot of time, and considerable paper, by not publishing its report" (*New York Times* 2005).

However, the commission actually accomplished much more than taking the heat off the Bush administration: Its unanimous report sparked a variety of important reforms. After receiving the report, Bush ordered agency heads to inform White House Homeland Security Advisor Frances Fragos Townsend of their plans for implementing each commission proposal. During subsequent months, Townsend met frequently with those officials to press them to act on recommendations which they resisted (Bumiller 2005). This pressure from the White House led agencies to make major changes that they would not have otherwise made.

To take two examples, the commission proposed: (1) combining the intelligence, counterintelligence, and counterterrorism divisions of the Federal Bureau of Investigation (FBI) into a national security service subject to the budgetary authority of the director of national intelligence (DNI); and (2) placing several parts of the Justice Department under the authority of a new assistant attorney general for national security. The goal of these proposals was to integrate the FBI into the broader intelligence community and to break down bureaucratic walls between intelligence and law enforcement within the Justice Department (Commission on the Intelligence Capabilities of the United States regarding Weapons of Mass Destruction 2005, 29–32). Both recommendations were controversial within the administration because they threatened the turf of existing agencies and offices. FBI Director Robert Mueller opposed the national security service recommendation, and Justice Department officials were divided on the other proposal.[3] Yet the recommendations were endorsed

[3] Interview of FBI official, October 2007; interview of Justice Department official, November 2007; interview of senior Bush administration official, May 2009.

by Bush – leading within a year to the establishment of an FBI national security branch subject to the DNI's budgetary authority, and to the formation of a Justice Department national security division headed by a new assistant attorney general.[4]

Each of these reforms was triggered directly by the Robb-Silberman Commission. Before the commission reported, the White House had not considered such large-scale overhauls of the Justice Department and FBI.[5] Without the panel, the reorganization ideas would not have been placed on President Bush's radar screen, and Bush would not have acted to institute the changes over the objections of top agency officials. One Justice Department official said of the reforms, "They wouldn't have happened but for the commission."[6] Another administration counterterrorism official recalled, "There were lots of folks within the department and within the FBI who didn't want to make those changes, and they had to be overruled. It only happened because of the report."[7] A senior FBI official, acknowledging that the bureau opposed reorganization, agreed that it occurred because the commission prompted Bush to press for implementation of its proposals.[8]

The commission also influenced many other reforms, including the formulation of new standards for conducting intelligence analysis and the establishment of "mission managers" under the DNI to oversee all intelligence efforts on priority subjects, such as North Korea and Iran.[9] Some of these changes were facilitated by the contemporaneous establishment of the DNI post. One intelligence official commented, "[DNI] John Negroponte's entire strategic plan for transforming the IC [intelligence community] was modeled on [the commission's] report."[10]

More broadly, the commission's substantial impact was made possible by the Iraq WMD scandal that prompted the panel's formation in the first place and placed pressure on the Bush administration to reform intelligence. Commission member William Studeman noted, "Our recommendations came at a time when the IC needed to get some focus for

[4] "Bush Administration Actions to Implement WMD Commission Recommendations," White House memorandum, June 29, 2005; Public Law 109–177, enacted on March 9, 2006.
[5] Interview of senior Bush administration official, May 2009.
[6] Interview of Justice Department official, November 2007.
[7] Interview of Bush administration official, February 2008.
[8] Interview of FBI official, October 2007.
[9] "Office of DNI Progress Report – WMD Recommendations," Office of the DNI, July 27, 2006.
[10] Interview of intelligence official, May 2008.

reform and transformation, and when serious round turns needed to be taken."[11]

In short, the scandal created a window of opportunity for reform, which the Robb-Silberman Commission seized. The WMD fiasco placed pressure on administration officials to improve intelligence, but the commission's report was necessary to catalyze important policy and organizational changes.

The Conventional Wisdom about Commissions

The story of the Robb-Silberman Commission illustrates how a commission established to quiet a furor can also drive major reforms. Yet the conventional wisdom about commissions is that their reports do little more than gather dust on bookshelves. Commentators typically see the appointment of a commission during a crisis as a symbolic action that relieves policy makers of political pressure but does not lead to policy change. One *Washington Post* reporter quipped, "There are two ways to bury something in Washington: 1) Dig a hole in the ground, insert something and cover it. 2) Appoint an advisory commission to report on whatchamaycallit" (Causey 1987). In a similar vein, a *New York Times* headline declared, "Commissions Are Fine, But Rarely What Changes the Light Bulb" (Rosenbaum 2005).

The statements of many policy makers are not any more charitable. When John McCain proposed forming a commission to study the U.S. financial crisis during the 2008 presidential campaign, Barack Obama mocked the idea as "the oldest Washington stunt in the book," implying that a commission would not help solve the problem (Shear 2008). In a different context, former Defense Department official James Bodner observed, "Most commissions are created for reasons other than producing results. And most commissions don't produce results."[12]

The conventional view of commissions is captured well by a joke Lloyd Cutler, White House Counsel to Presidents Jimmy Carter and Bill Clinton, used to tell: "A retiring president leaves his successor three envelopes to be opened, in sequence, to learn what to do each time he faces a serious crisis. The first envelope says 'Blame your predecessor.' The second says 'Appoint a commission.' The third says 'Prepare three envelopes.'"[13]

[11] Interview of William Studeman, October 30, 2007.
[12] Interview of James Bodner, April 23, 2008.
[13] I am grateful to I. M. Destler for relaying this joke.

Some scholars share the view that commissions rarely spur policy change. Mark Fenster claims that the influence of commissions "seems to fall within a narrow range – from marginal to nil – and rare is the commission whose proposals are actually adopted into law or regulatory rule" (Fenster 2008, 1242). Daniel Byman asserts that commissions "are like bees: They sting once and then die" (Byman 2006). Kenneth Kitts, author of the only book other than this one on national security commissions, describes them as damage control devices rather than as institutions that contribute to reform (Kitts 2006). Even some commission members have a dim view of the influence of advisory panels. Sidney Drell, who has served on many panels, commented, "Commissions don't have batting averages that are as good as those of good baseball hitters."[14]

In spite of this conventional wisdom, an occasional commission garners widespread praise for triggering major reform. To cite two examples, many observers have credited the 9/11 Commission with inducing enactment of the 2004 law that created the DNI and lauded a panel chaired by Alan Greenspan in 1983 for breaking a deadlock on Social Security reform (Kaplan and Whitelaw 2004; Tolchin 1983). More generally, some scholars assert that commissions often play important roles in spurring organizational change or fostering consensus on controversial measures (Campbell 2002; Pfiffner 2009b; Wolanin 1975).

Research Questions and Existing Knowledge

These contrasting opinions frame the questions that motivate this book: Are the 9/11 and Greenspan Commissions anomalies, as the conventional wisdom would suggest, or do many commissions prompt significant reforms? How can a commission spark reform that would not happen without it? Why are some commissions influential whereas others are not?

Before proceeding, a word about the kind of commissions I am discussing. For the purposes of this book, I define a commission as a temporary panel of two or more people – including at least one private citizen – created by an act of Congress or executive branch directive. The body also must only possess informal advisory power and must be mandated to produce a final report within four years.[15]

[14] Interview of Sidney Drell, January 25, 2008.

[15] A standard definition of a commission does not exist. Mine draws heavily on definitions by the 1972 Federal Advisory Committee Act and by other scholars (Tutchings

Such commissions are a staple of American politics. In national security policy alone, the executive branch and Congress form new panels nearly every year. (I use the terms "commission" and "panel" interchangeably.) Moreover, some panels, such as the 9/11 Commission and the 2006 Iraq Study Group (or Baker-Hamilton Commission), attract great public interest.

Yet relatively few scholars have examined the impact of commissions. In the first systematic study of the issue, Thomas Wolanin traced the government's response to ninety-nine commissions and found that roughly half of them had an important recommendation acted on by the executive branch or Congress (Wolanin 1975, 131–139). A decade later, David Filtner argued, based on case studies of eight commissions addressing social policy, that panels can educate the public and legitimize new ideas (Filtner 1986, 151–180). More recently, James Pfiffner concluded, in a survey of twenty-three panels, that some of the past century's most important changes in government organization resulted from the work of commissions (Pfiffner 2009b).

In addition, several excellent studies have focused on national security commissions. Kenneth Kitts found, in a study of five such panels, that commissions can help the president deflect criticism and remain in control of policy making (Kitts 2006, 174). Christopher Kirchhoff concluded, based on an examination of three disaster investigations, that commissions have a special capacity to identify deficiencies in government institutions (Kirchhoff 2009). In the intelligence arena, Michael Warner and Kenneth McDonald determined that four intelligence reviews led to important reforms, whereas Amy Zegart found that the vast majority of intelligence commission proposals were not implemented during the decade before September 11, 2001 (Warner and McDonald 2005; Zegart 2006; Zegart 2007). In a case study, Loch Johnson concluded that the 1996 Aspin-Brown Commission bolstered the intelligence community's public reputation (Johnson 2004).

Taken together, these rich studies have generated many valuable insights about commissions. But they have left some large gaps. Most importantly, scholars have not fully explained how and when commissions can induce

1979, 11–12; Wolanin 1975, 7; Zegart 2004, 369). My definition excludes ad hoc panels formed by standing bodies such as the Defense Science Board and the National Research Council. It also excludes the Base Realignment and Closure (BRAC) commissions, whose recommendations on base closings must be accepted or rejected by the president and Congress without revision. This formal proposal power gives BRAC commissions a different source of influence than commissions that only possess informal advisory power.

government reforms, or tested hypotheses about the impact of commissions while controlling for relevant variables. These gaps leave us without a clear understanding of why some commissions are more influential than others. In addition, with the exception of a study by Colton Campbell, scholars have tended to focus on panels created by the president, thereby neglecting the role of congressional commissions (Campbell 2002).

Overview of the Argument

In this book, I attempt to fill these gaps by formulating and testing a theory of commission influence while revealing the broader importance of commissions for policy making. I demonstrate that far from just being ways to pass the buck or avoid blame, commissions can be valuable tools for driving reform on important issues.

Simply put, Congress and the president often need help making policy. Excessive partisanship, fierce turf battles, and supermajoritarian requirements for the passage of legislation (e.g., the sixty votes needed to end a Senate filibuster) frequently prevent the president and Congress from adopting badly needed reforms. Although many commissions are created for reasons other than changing policy, they are often powerful vehicles for overcoming these obstacles to reform by forging bipartisan consensus. Their value is only increasing as the American political system becomes more polarized, making it all the more difficult for elected officials to forge consensus themselves. Commissions are one of the best antidotes to polarization.

The power of commissions lies in their unique form of political credibility. This credibility stems from their independence, stature, and bipartisanship – a special combination of characteristics that distinguishes commissions from both the executive branch and Congress. Commissions can have tremendous impact because a unanimous report by a politically diverse, prestigious, and independent panel sends a powerful signal to policy makers and the public that its proposals are both sound and politically palatable. These commission proposals can thereby become the focal point of a reform debate, prompting elected officials to adopt them. By contrast, technical expertise is not usually the source of a commission's appeal. The impact of most commissions is driven more by their political credibility than by their specialized knowledge.

Yet the possession of political credibility is not sufficient for a commission to spur change. After all, many commissions possess credibility but fail to have a major impact. The most important condition that enables a

commission to turn its credibility into influence is the existence of a crisis on the issue addressed by the panel.

In the political world, a crisis is a moment of heightened political pressure stemming from an unexpected event. Since political pressure is hard to measure, in this book I define a crisis more simply as a situation marked by a disaster or government scandal (the two kinds of events that can suddenly generate intense pressure on policy makers). Using this definition, I classify commissions into two types: 1) crisis commissions, which are established by the executive branch or Congress in response to a disaster or scandal; and 2) agenda commissions, which are created by Congress or the executive in the absence of a crisis to advance a policy goal.

Challenging the conventional wisdom, I argue that crisis commissions often do trigger policy change – even if they are formed primarily to defuse political pressure. They have this effect by taking advantage of windows of opportunity for reform opened by disasters or scandals. Since crises make the status quo unpopular, they create demand for proposals that can serve as focal points for reform efforts. Crisis commissions often generate such proposals, thereby boosting the prospects for reform and, if reform does occur, shaping exactly how policy changes. On the other hand, agenda commissions usually do not prompt change because it is very difficult to overturn the status quo without the impetus provided by a crisis. My argument therefore contains a certain irony: Commissions formed to deflect pressure tend to trigger more reform than commissions established to influence policy.

Two other factors also greatly influence the likelihood of a commission sparking policy or organizational change: whether a commission is formed by the executive branch or by Congress, and whether its mandate is narrow or broad. Executive branch commissions have greater impact than congressional commissions because they can be appointed more quickly and tend to be less politically polarized, enabling them to reach consensus and to complete their work while a window of opportunity for reform remains open. At the same time, commissions with relatively narrow mandates spur more reform than panels of broader scope because a narrow charge makes it easier for a commission to achieve unanimity and to advocate effectively for the adoption of its recommendations.

Testing the Argument

Although my argument, spelled out in greater detail in Chapter 2, applies to commissions that operate in any policy area, I test it on commissions

that examined national security issues. Chapter 3 analyzes an original data set of all fifty-one national security commissions that reported between the beginning of the Reagan administration and the end of 2006.[16] This data set includes information on numerous variables that might contribute to commission outcomes, as well as two original measures of commission impact. The analysis represents the first effort to use statistical tests that control for relevant variables to probe the factors that shape commission influence. A battery of tests determines that the evidence matches my theory's expectations.

I supplement this statistical analysis with case studies, which span Chapters 4–6. In these case studies, I investigate the impact of eight commissions that investigated terrorist threats or attacks. The case studies demonstrate that commissions have played a central role in the U.S. response to terrorism during the past three decades, shaping many major national security decisions. In each case, I assess whether the commission was directly responsible for important policy changes, and I evaluate whether my theory explains the outcome.

The first of these case study chapters discusses three terrorism commissions that were created by the executive branch during the 1980s, in response to bombings by Hezbollah and Libya that killed hundreds of Americans at U.S. facilities in the Middle East and aboard a transatlantic civilian flight.[17] My analysis shows that these crisis commissions had powerful effects, influencing the 1984 U.S. withdrawal from Lebanon and triggering reorganizations of the State Department and Federal Aviation Administration. In each instance, the commission's political credibility enabled it to establish a reform focal point at a time when policy makers faced pressure to make changes but could not otherwise agree on reforms.

Chapter 5 picks up the story of terrorism commissions in the late 1990s, when Al Qaeda replaced Hezbollah, Libya, and Iran as the greatest terrorist threat to the United States. The chapter compares two commissions that were created after Al Qaeda's bombing of U.S. embassies in Africa in August 1998: an executive branch commission that catalyzed important upgrades to embassy security, and a congressional commission

[16] I am grateful to Amy Zegart for sharing with me her commission data set, which provided some of the foundation for mine.

[17] The panels are the Commission on Beirut International Airport Terrorist Act of 23 October, 1983 (the Long Commission), the Secretary of State's Advisory Panel on Overseas Security (the Inman Panel), and the President's Commission on Aviation Security and Terrorism (the Lockerbie Commission).

on terrorism that did not spur reform.[18] I also explain how the *USS Cole* Commission, formed after Al Qaeda's bombing of a Navy destroyer in October 2000, sparked important changes in military force protection policies.

Chapter 6 focuses on Al Qaeda's September 11, 2001 attack and two related panels: the Hart-Rudman Commission and the 9/11 Commission.[19] The Hart-Rudman Commission's story unfolds in two parts. Its scant impact before 9/11 illustrates how difficult it is for agenda commissions to spark change, whereas its ability to shape the establishment of the Department of Homeland Security after 9/11 shows how a panel can spur reorganization in the wake of a crisis. The 9/11 Commission's impact was even greater: It induced the creation of the DNI post and a host of other counterterrorism reforms. The commission's catalytic effect was driven by the magnitude of the 9/11 attack, the panel's remarkable bipartisan cohesion, and the commission's persistent advocacy on behalf of its proposals.

The final chapter evaluates the influence of the Iraq Study Group, which received a cool reception from President Bush and congressional leaders but ultimately had a substantial impact by shaping the Iraq platform of then-Senator Barack Obama as he launched his presidential bid. The concluding chapter also explains why my argument should apply to commissions on issues other than national security, considers whether commissions generally give good advice, and offers tips for policy makers interested in forming a commission or advancing reform.

[18] The panels are the Accountability Review Boards on the Embassy Bombings in Nairobi and Dar Es Salaam on August 7, 1998 (the Crowe Panel) and the National Commission on Terrorism (the Bremer Commission).

[19] Formally, these panels are the United States Commission on National Security/21st Century and the National Commission on Terrorist Attacks upon the United States.